Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, General Teamsters and Allied Workers, Local Union No. 992. Cases 6-CA-13435 and 6-CA-14057

December 16, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On May 14, 1982, Administrative Law Judge George Norman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief in opposition to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge, as modified herein, and to adopt his recommended Order, as modified herein.[2]

We do not adopt the Administrative Law Judge's recommended Order to the extent that it requires Respondent to offer reinstatement to discriminatee John Mills a second time. The record indicates, and the Administrative Law Judge found, that, pursuant to the above-mentioned court order, Mills received an offer of reinstatement from Respondent. Although the record also reveals that Frank Maietta indicated that he was pleased that Mills failed to respond to the reinstatement offer, there is no evidence that the offer itself was not valid. Accordingly, we shall modify the Administrative Law Judge's proposed Order to delete Mills' name from the reinstatement provision.

Respondent discharged David Harris on July 14, 1980, within 2 weeks after Frank Maietta discovered that he had met with a Board agent. Respondent contends that it discharged Harris because of his failure to report to work or to notify Respondent of his absence on that day. The Administrative Law Judge found, and the record indicates, that Harris' absence resulted from his severely sunburned condition, and that Harris attempted to contact Maietta to explain the problem, but Maietta did not return his telephone calls. The Administrative Law Judge found further that other employees had been absent prior to Harris, but they received no punishment whatsoever. In light of these findings, as well as the timing of the discharge and Maietta's hostile attitude toward Board processes, it is clear that Respondent discharged Harris because of his cooperation with the Board's investigatory activities. Accordingly, we agree with the Administrative Law Judge that Harris' discharge violated Section 8(a)(4) of the Act.

The Administrative Law Judge also concluded that Respondent's failure to reinstate mechanic Simon Hobbs violated Section 8(a)(3) and (1) of the Act. In refuting Respondent's contention that Hobbs was not reinstated because of a lack of available work, he noted that Respondent subcontracted a portion of the work that was formerly performed by Hobbs, and assigned other mechanical work to newly hired employees Border and Schaffnit.[3] We further find that, although Respondent had less mechanical work available than when Hobbs was employed, this lack of work resulted from the fact that Respondent reduced its operations and sold several trucks in order to avoid recalling Hobbs and the other discriminatees.

Respondent contends that the Administrative Law Judge was biased against it, and vehemently attacks his competence. To this end, Respondent's

[1] In the "Discussion and Conclusions" portion of his Decision, the Administrative Law Judge remarked that "Respondent's final 'proposal' which contained the management rights (subcontracting and sale) clause was a request which on its face no union could possibly agree with." This clause stated that "[T]he company specifically has [a] unilateral right to subcontract or sell all or any portion of its business." While we do not necessarily agree that *no* union could accept such a proposal, it is clear that, in this case, this onerous request was part of Respondent's strategy to provoke a bargaining impasse with the Union and unilaterally implement the above subcontracting clause, thereby avoiding compliance with the Federal distict court order requiring it to reinstate the discriminatees.

Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] We shall modify the Administrative Law Judge's recommended Order to require Respondent to expunge from its files any references to the discharges of the discriminatees, and to notify them in writing that evidence of this unlawful conduct will not be used as a basis for future personnel actions against them. See *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

The Administrative Law Judge's recommended remedy, *inter alia*, requires Respondent to "restore its trucking operations," and to "rescind its subcontracting or other business relationship with Cassidy Trucking." We shall conform our Order to these recommendations. In adopting this remedy, we wish to emphasize that Respondent reduced its operations and sold its trucks for the purpose of circumventing the court's order to reinstate the discriminatees. Our Order herein follows the Board's longstanding policy that the wrongdoer should bear the consequences of its unlawful actions, and seeks to restore the *status quo ante*. Moreover, Respondent has not urged that compliance with this Order would result in undue economic hardship endangering its continued viability. See *Smyth Manufacturing Company Inc.; Beacon Industries*, 247 NLRB 1139, 1172 (1980).

[3] We note, in addition, that certain mechanical work was assigned to newly hired employee Paul Beaver.

brief in support of its exceptions lists a litany of alleged improprieties committed by the Administrative Law Judge. In addition, Respondent contends that the General Counsel's conduct was improper.

We have carefully considered the record and find Respondent's charges to be entirely without merit. In fact, we believe that these charges may be an attempt to distract the Board from Respondent's own illegal conduct. Moreover, we are by now all too familiar with Respondent's attorney Joel I. Keiler's groundless accusations against administrative law judges. See *Southern Florida Hotel & Motel Association, and its employer-members, The Estate of Alfred Kaskel d/b/a Carillon Hotel; The Estate of Alfred Kaskel d/b/a Doral Hotel and Country Club; The Estate of Alfred Kaskel d/b/a Doral Beach Hotel*, 245 NLRB 561, fn. 6 (1979), wherein the Board found that Keiler made "unprofessional and unseemly remarks" which were "totally inappropriate and uncalled for"; and *Blake Construction Co., Inc., M & S Building Supplies, Inc.*, 245 NLRB 630, fn. 1 (1979), in which the Board found Respondent's "various contentions regarding the bias and competency of the Administrative Law Judge" to be without merit. At this point, we are beginning to grow weary of responding to Keiler's disingenuous cries of "wolf." Moreover, we find that Keiler behaved inappropriately and unprofessionally throughout the hearing, and that the Administrative Law Judge's constant need to reprimand him unnecessarily prolonged this case. However, we will not at this time *sua sponte* institute disciplinary proceedings against Keiler. We trust that, in his subsequent appearances before the Board, it will be unnecessary for us to consider doing so.[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Baord adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting, Chambersburg, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(b):

"(b) Offer immediate and full reinstatement to employees Melvin Miller, Blaine J. Jordan, Jr., Stephen Walker, Edward M. Johnston, William E. Stanley, Jr., Donald Carr, Simon Hobbs, John H. Stine, Curtis McKeithan, and David Harris to their former positions, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered as a result of their unlawful discharges, in the manner set forth in the section of the Administrative Law Judge's Decision entitled 'The Remedy.'"

2. Insert the following as paragraphs 2(c) and (d) and reletter the subsequent paragraphs accordingly:

"(c) Expunge from its files any references to the discharges of Melvin Miller, Blaine J. Jordan, Jr., Stephen Walker, Edward M. Johnston, William E. Stanley, Jr., Donald Carr, Simon Hobbs, John H. Stine, Curtis McKeithan, and David Harris, and notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them.

"(d) Restore its trucking operations."

4. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT reduce our operations at Corson and Gruman or any other employer and subcontract work or otherwise engage Cassidy Trucking so as to avoid having to recall discriminatorily discharged employees.

WE WILL NOT subcontract out mechanical work formerly performed by employee Hobbs or transfer other mechanical work to other employees so as to avoid having to recall Hobbs.

WE WILL NOT sell our trucks to avoid recalling discriminatees.

[4] Respondent further contends that the Administrative Law Judge's failure to grant Respondent's motion to strike the General Counsel's brief as untimely filed is evidence of his alleged bias. We find, however, that documentary evidence accompanying the General Counsel's opposition to Respondent's motion clearly demonstrates that his brief was filed within the time limit. Respondent's contention, therefore, is without merit.

WE WILL NOT sell our trucks or other equipment without notifying International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, General Teamsters and Allied Workers, Local Union No. 992.

WE WILL NOT discharge our employees because they have given affidavits to Board agents.

WE WILL NOT fail or refuse to recognize and bargain collectively with the Union as the exclusive bargaining representative of the employees in the following appropriate bargaining unit:

All construction employees employed by Maietta Contracting, including truck drivers, mechanics, utility employees, and equipment operators, and excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them under Section 7 of the Act.

WE WILL upon request bargain with the Union as the exclusive representative of all our employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL offer immediate and full reinstatement to employees Melvin Miller, Blaine J. Jordan, Jr., Stephen Walker, Edward M. Johnston, William E. Stanley, Jr., Donald Carr, Simon Hobbs, John H. Stine, Curtis McKeithan, and David Harris to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings they may have suffered as the result of their unlawful discharges, with interest.

WE WILL expunge from our files any references to the discharges of Melvin Miller, Blaine J. Jordan, Jr., Stephen Walker, Edward M. Johnston, William E. Stanley, Jr., Donald Carr, Simon Hobbs, John H. Stine, Curtis McKeithan, and David Harris, and WE WILL notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them.

WE WILL restore our trucking operations.

DENNIS G. MAIETTA AND FRANK M. MAIETTA T/A MAIETTA CONTRACTING

DECISION

STATEMENT OF THE CASE

GEORGE NORMAN, Administrative Law Judge: Upon charges filed with Region 6 of the National Labor Relations Board by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, General Teamsters and Allied Workers, Local Union No. 992 (herein the Union), a consolidated complaint issued on February 27, 1981, against Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting (herein Respondent). The complaint alleges, *inter alia*, that Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act (herein the Act).

More specifically, the complaint alleges that Respondent reduced its operations, subcontracted unit work, and sold its trucks, resulting in the reduction of unit work, so as to avoid recalling certain discriminatees, in violation of Section 8(a)(1) and (3) of the Act. The complaint also alleges that Respondent reduced its operations and subcontracted unit work without prior consultation and/or negotiations with the Union and in order to avoid its bargaining obligation, in violation of Section 8(a)(1) and (5) of the Act. Finally, the complaint alleges that Respondent terminated the employment of David Harris because Harris gave an affidavit to a Board agent, in violation of Section 8(a)(1) and (4) of the Act.

Respondent's answer admits service of charges, the commerce and jurisdictional allegations, the labor organization status of the Union, and the supervisory status allegations. Respondent denied the commission of any unfair labor practices.

The hearing in this matter was conducted in Chambersburg, Pennsylvania, on October 13 and 14, and November 3-6, and 12, 1981. Briefs have been received from the General Counsel and Respondent.

Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the post-hearing briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a partnership with an office and place of business in State Line, Pennsylvania, has been engaged in the excavation and construction material hauling business. During the 12-month period ending December 11, 1980, Respondent, in the course and conduct of its business operations, performed services valued in excess of $50,000 outside the Commonwealth of Pennsylvania. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

From approximately May 1979 to the fall of 1980, Respondent was primarily engaged in excavation and construction material hauling work on a sewerline project as a subcontractor for Corson and Gruman Company (herein C & G) in which Respondent's truckdrivers hauled away soil.

Based upon a prior charge filed against Respondent by the Union in Case 6-CA-12660, a 10(j) hearing was conducted before U.S. District Judge R. Dixon Herman, Jr., of the United States Court for the Middle District of Pennsylvania, on December 20, 21, and 27, 1979, on a petition filed by the General Counsel. On February 26, 1980, Judge Herman issued his Decision. He ordered *inter alia*, Respondent to reinstate 10 employees fired by it in August 1979, and to bargain with the Union.

By stipulation, the district court record was submitted during the hearing on complaint in lieu of a new hearing. On April 24, 1980, Administrative Law Judge Benjamin Schlesinger issued his Decision which was upheld by the Board, on August 14, 1980. *Maietta Contracting*, 251 NLRB 177 (1980). In essence, the Board found that, in August 1979, Frank Maietta engaged in numerous egregious acts in violation of Section 8(a)(1) and (3) of the Act, including: precipitously firing all 10 card signers (out of 17 employees), interrogating its employees, threatening the employees with closure and cessation of trucking operations, creating the impression of surveillance, coercively polling the employees, threatening employees with discharge if they did not sign documents favoring Respondent. In addition, the Board issued a bargaining order.

Following the district court hearing and order, telephone calls were placed between Respondent and Cassidy Trucking, another truck hauling firm. Calls were placed from Cassidy to Respondent on January 29, February 21 and 28, and March 13 and 21, 1980. Calls were placed from Respondent to Cassidy on February 23 and March 7, 1980. Although subpoenaed by the General Counsel, neither Respondent nor Cassidy produced *home* telephone bills.[1]

On February 28, 1980, 2 days after the issuance of United States District Court decision, referred to above, employee David Harris asked Frank Maietta about the newspaper article which appeared in the Hagerstown, Maryland, newspaper that day describing the Federal district court order. Maietta responded, ". . . no g— damn federal judge is going to tell me how to run my f— business . . . this old boy has still got some tricks up his sleeve."

One of the Maietta jobs involved in the U.S. district court order was the C & G job located in Hagerstown, Maryland. Within a week of the order, Respondent reduced its number of trucks on the C & G job from approximately 12 to 5. Coincidentally with that action Cassidy trucks appeared on the job and began performing the same type of work Respondent trucks had been performing at the C & G job. Prior to the appearance of Cassidy, Respondent's trucks were the only tandem-axle trucks hauling at the C & G site.[2] The reduction in the number of Respondent trucks on that job was made at the request of Respondent and not C & G. About February 28, 1980, 2 days after the U.S. district court decision, Frank Maietta told Thomas McKew, superintendent of C & G, that Respondent could supply only about five trucks.

On March 3, 1980, 5 days after the U.S. district court decision, Respondent sent letters to eight of the discriminatees informing them that they were being placed on an "inactive payroll in layoff status for lack of work based on . . . seniority." The letters also stated that they would be recalled in seniority order when work became available.[3] At that time, all discriminatees had more seniority than employees Border and Schaffnit.[4] Discriminatees Mills, Stine, and Hobbs had more seniority than Schmidt. Hobbs had more seniority than Harris, Dennis Maietta, and Mussolino.

As previously indicated, Respondent laid off the replacement for the discriminatees, except for Matthew Border and Jeff Schaffnit. Two of the replacements laid off at that time, Jon Boyer and Thomas Sigler, were referred to Cassidy by Frank Maietta and hired by Cassidy to work on the C & G job. Boyer was laid off in early March and recalled by Respondent on March 12. Boyer testified that on March 12 Frank Maietta told him, ". . . that he was referring me, along with some of his other people who he felt were good drivers to Jack Cassidy, which was taking over." Later that day, Frank Maietta, accompanied by Boyer, approached Jack Cassidy. Maietta told Boyer to give Cassidy a ride. Boyer gave Cassidy a ride and at the conclusion of the ride Cassidy introduced himself. Cassidy told Boyer he had just been given a road test and that if he wanted a job with Cassidy he could start that following morning. Boyer did in fact begin driving for Cassidy the following day.

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[1] Respondent and Cassidy worked together on a hauling job in the Bethesda, Maryland, area during the summer of 1978. The general contractor paid Cassidy for the hauling performed by both Cassidy and Respondent. Cassidy, in turn, paid Respondent for the approximately 10 trucks and drivers supplied by Respondent to Cassidy. Jack Cassidy, president of Cassidy Trucking, dispatched Respondent's employees on the job. Respondent's trucks were stored on Cassidy's property and, in addition, during that period, Respondent purchased several new trucks and sold two of them directly to Cassidy. The evidence shows that Maietta and Cassidy worked together on other prior jobs.

[2] Before Respondent started the C & G job, other trucking firms performed the hauling. During the time Respondent was on C & G job, two single-axle trucks, owned by a foreman of C & G, were used on narrow strenches which were too small for Respondent's trucks.

[3] Respondent used one employee per truck. It laid off the replacements for the discriminatees, except for Matthew Border and Jeff Schaffnit. The replacements, of course, had less seniority than the discriminatees. Remaining in Respondent's employ were the following unit employees: LeRoy Harshman, Paul Beaver, Anthony Maietta, Dennis Maietta (son of Frank Maietta), Gary Mussolino, William Schmidt, Matthew Border, David Harris, and Jeff Schaffnit.

[4] At the Federal district court hearing it was stipulated that Border and Schaffnit were unit "utility" employees.

Harris testified that about a week after Maietta's conversation with Harris concerning the newspaper article referred to above, Maietta told him that Mills and Stine would be coming back inasmuch as they had not caused Maietta trouble and that they were the only two worth hiring back; that he would shut his business down first. Stine and Mills did receive offers of reinstatement from Respondent.

A week later, Stine reported to work. Frank Maietta summoned Harris and employee LeRoy Harshman to his office to witness Maietta's conversation with Stine. In their presence, Maietta asked Stine if he had a Maryland, Pennsylvania, or West Virginia driver's license. Stine said that he did not, but that he had a Virginia driver's license. Maietta then told him that he had to have a Maryland license in order to drive for Respondent. After Stine left, Maietta asked Harris and Harshman to repeat the conversation with Stine and to remember what had been said. After they complied with Maietta's request, Maietta said, ". . . well, that takes care of Stine, now Mills didn't show up; he blew his case . . . now that I've brought Cassidy in, I now don't have to bring the other guys back." Maietta remarked that Mills did him, "a big favor by not coming in."[5]

After Cassidy began the C & G job referred to above, Jack Cassidy went to Respondent's office, at least once a week, for at least 4 weeks. The Cassidy drivers used the Maietta work tickets for several weeks after they began hauling on that job. Those work tickets were printed and distributed by the haulers and not by C & G. Furthermore, Cassidy's trucks were parked at Respondent's shell pit for several weeks after Cassidy began at C & G. In June 1980, a Caterpillar loader owned by Cassidy was used by Respondent in its business.

B. *Bargaining Pursuant to the U.S. District Court Order*

Pursuant to the U.S. district court bargaining order, Respondent and the Union met on April 22, 1980. Attorney Joel I. Keiler, who represented Respondent in the instant proceedings, and Frank Maietta conducted the bargaining negotiations for Respondent. The Union was represented by Racie Sherman, business agent. Although the Union had submitted its proposal to Respondent before the negotiations began, Respondent submitted its proposal at the bargaining session and insisted that its proposal be discussed first. Included in Respondent's proposal was the following article:

Article VIII—Management's Rights

> Whatever conditions of whatsoever kind which have not been specifically mentioned in this agreement are reserved to the Company, which is free to make unilateral changes concerning those reserved items without the necessity of prior notification to the Union. The Company specifically has unilateral right to subcontract or sell all or any portion of its business. such subcontracting for sale shall not be in subject of arbitration, law suit, or unfair labor practice charge.[6]

Joel Keiler testified[7] that he told the Union that the above clause was "the most important item in the whole contract as far as the Company was concerned. Dennis Maietta's health is abysmal, he can't work for the Company, Frank Maietta cannot run the whole company himself, we would like to subcontract, we would like to sell the trucks and, in this business, if the iron is hot, you had better strike it when you can and if he gets a good price on some trucks, he wants to be able to sell the trucks immediately and, therefore, we're proposing that we have unfettered, unrestricted right as to the sale of trucks and as to subcontracting and we won't even have to give the Union prior notice but we're willing to bargain over the effects."

Keiler went on to testify that the Union "totally rejected it. I said, listen, if you guys turn this down and specifically this clause, we're going to be at an impasse, and Racie Sherman just shrugged, well, put his hands up in the air, shrugged his shoulders, raised his eyebrows and didn't say anything."

Joel Keiler testified further as follows:

> Q. Okay, it says on Article XII, I again stated that our proposal as amended was final that if he could not agree to our subcontracting proposal there would not be a contract. Did you make that statement?
>
> A. Yes.
>
> Q. And when you referred to our subcontracting proposal, were you referring to Article VIII, Management Rights Clause, is that correct?
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> A. That's correct.
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> Q. And the amendment you referred to there was again, the amendment with respect to sale of trucks to employees, is that correct?
>
> A. That's correct.

Keiler further testified that at the end of the meeting he told Sherman, that was the complete and final proposal of Respondent, and "if they [the employees] reject this, and especially the subcontracting clause, that's the end of it."

During the course of negotiations, several concessions were made by each side. Respondent, however, refused

[5] The fact that Stine did not have a Maryland license was revealed at the earlier U.S. district court proceeding. It was brought out on cross-examination by the attorney for Respondent. Although there is no evidence that Respondent previously was told by Stine he did not have a Maryland license, it appears that a Maryland driver's license was not a past requirement of Respondent. The evidence reveals that employees were not before that time asked by Respondent about their driver's licenses. To the contrary, Respondent required employee Hobbs to drive a truck even though Hobbs told Respondent, on several occasions, that he did not have a proper chauffeur's license.

[6] On its face, the article signaled Respondent's intentions to circumvent the U.S. district court order by subcontracting out its work rather than reinstate the discriminatees.

[7] Before taking the stand, Joel Keiler withdrew as Respondent's attorney for these proceedings and his brother, Alan Keiler, represented Respondent during Joel Keiler's testimony. Without objection from the General Counsel, Joel Keiler resumed representing Respondent after Alan Keiler was barred from the proceedings by the Administrative Law Judge because of his contemptuous and disrespectful conduct, as reflected in the record.

to agree to a union-security clause and a union-checkoff clause. It proposed two paid holidays; 1 week of paid vacation for only those employees who had worked at least 1,450 hours per calendar year for 3 consecutive years; a 5-percent wage increase; insisted that arbitrators must be members of the Maryland Bar; and refused to agree to certain then current practices of Respondent, such as seniority.

The Union agreed to take Respondent's "final" proposal to the membership. On April 28, 1980, the union membership unanimously rejected Respondent's proposal. On April 29, 1980, Sherman informed Keiler of that fact. Keiler insisted that the Union submit a new proposal before Respondent would negotiate further. Sherman asked Keiler if he wanted to continue negotiations and Keiler responded in the negative. Keiler asked what Sherman's position was. Sherman said that the Union's position was the same; i.e., it wished to continue negotiations. Keiler then stated that Respondent was going to implement to subcontracting clause inmediately.

No other negotiations were conducted. On May 1, 1980, Respondent sold 5 of its approximately 20 trucks to Yonkers Contracting, which paid Respondent the $163,000 purchase price in full. Respondent had previously placed telephone calls to Yonkers Contracting on March 25 and 31, and April 2, 3 (two times), 7, 8 (four times), 10, 18, 21, 24, 28, and 29, 1980.

By letters dated May 15 and 29, 1980, the Union requested further negotiations. Keiler again refused to negotiate unless the Union submitted a new proposal.

C. *The 8(a)(4) Alleged Violation*

On July 1, 1980, employee Harris submitted an affidavit to Board Agent William Slack, one of the attorneys who handled the 10(j) proceedings. About July 3, 1980, Frank Maietta told Harris that he had heard that Harris had a visitor from the Labor Board. Harris confirmed this information. Maietta then asked him what the Board agent and he had talked about. Harris responded that they did not talk about much because, "I didn't know nothing about what was going on." On July 14, 1980, Harris was fired.

The immediate circumstances surrounding Harris' firing are as follows: Harris suffered a severe case of sunburn over the weekend of July 12 and 13, 1980. That condition caused him to be awake much of the evening on July 13. As a result, he overslept the morning of July 14. Later that morning, Harris' mother called him and told him that Frank Maietta had called. His mother's call awakened him and he immediately called work. Harris spoke to the secretary who told him that Frank Maietta was not in. Harris explained his situation but the secretary told him that, according to Frank Maietta, if Harris did not report to work that day, he was fired. Harris asked the secretary to have Maietta call him back. Harris did not report to work that day nor the next because of his sunburned condition. During the following 2 days, Harris tried to call Frank Maietta and could not reach him. Maietta did not return his calls.

Friday, July 18, Harris went to Respondent's office to pick up his paycheck (Friday is Respondent's regular payday). As the secretary handed Harris his paycheck he asked what his status was. She told him that he had been fired. On the following Wednesday, Harris reached Maietta and asked him about an unemployment compensation claim. Maietta told him that he could state on his application that he had been laid off. Notwithstanding, Respondent opposed Harris' application for unemployment compensation.[8]

Thomas McKew, superintendent of C & G, quit his job at C & G and on the following day he began a joint venture partnership with Frank Maietta under the name of M & M Excavating. This company performed excavation work and installation of sewer lines.[9] The capital for M & M was furnished by Frank Maietta in the amount of $25,000 in the fall of 1980 and $25,000 in the spring of 1981.

D. *Discussion and Conclusions*

Respondent's actions in this case must be viewed in the context of *Maietta Contracting*, 251 NLRB 177 (1980), referred to above. In that case, the Board found that Frank Maietta precipitously fired all 10 card signers in August 1979; engaged in interrogation; polled its employees; threatened to close the plant; and engaged in other egregious conduct all of which revealed Respondent's extreme union animus. Approximately 6 months after such egregious conduct, on February 26, 1980, a Federal district court judge, among other things, ordered the reinstatement of the 10 card signers and issued a bargaining order.

In the instant case, Frank Maietta's testimony and conduct was extremely hostile. While testifying, he blurted out defiantly that the proceeding was "a kangaroo court." He sarcastically interrupted both the General Counsel and the Administrative Law Judge and persisted in answering questions of his own counsel with the full knowledge that the General Counsel's objection to the questions had been sustained. He engaged in frequent outbursts during the course of the proceedings. He was extremely contemptuous, evasive, and nonresponsive in his testimony, requiring that he be admonished on several occasions. From time to time Maietta, out of order, volunteered several self-serving statements.

He denied firing anyone for union activity and persisted in the testimony that Stine had been fired in August 1979, because he did not show up for "3 weeks." However, the Board found in the *Maietta Contracting* case, *supra*, that Stine had been fired on August 23 and that Maietta in his testimony attempted to inflate his attendance problem out of proportion to its actual seriousness. In that case, although Maietta claimed that Stine's last day of work had been August 17, and that he was terminated after 3 days of absence, Maietta conceded that Stine had worked on both August 20 and 21 after he was confronted with Respondent's own payroll records.

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[8] The evidence shows that at times other employees were absent prior to Harris' absence but were not fired nor did they receive any punishment whatsoever.

[9] It is noted that Respondent had been performing excavation work prior to M & M Excavating entering the picture. M & M's hauling was performed by Respondent.

Maietta testified that he did not know who Respondent was hauling for in the summer of 1978; how many of Respondent's trucks hauled in the Bethesda, Maryland, area in the summer of 1978; or how Respondent was paid for that job. He said he had no knowledge whatsoever about the Bethesda job. He further testified that he could not recall the terms of the sale of trucks to Cassidy in the summer of 1978; that his brother handled all such negotiations. Later in his testimony he claimed he knew the trucks were new because he was half owner of Respondent. His entire testimony as to lack of knowledge concerning the Bethesda job which lasted the summer of 1978, especially that he was not aware of any payments by Cassidy to Respondent even though Cassidy had in fact paid Respondent thousands of dollars during the course of the summer of 1978, is incredible. Frank Maietta was running the business during that period and as an active partner and half owner he knew what was going on.

Maietta, at first, testified that the only capital he paid into M & M Excavating was an initial $25,000 but he later admitted that he came up with another $25,000 for M & M Excavating. He testified he had no knowledge that Stine did not have a Maryland license when the fact was brought out by his own counsel at the U.S. district court hearing. He claimed he had no contact with Cassidy with regard to the C & G job but as stated above there were several telephone calls between Respondent and Cassidy between the time of the U.S. district court hearing in December 1979 and the coming on the job of Cassidy at C & G on March 4, 1980. He also testified (incredibly) that prior to May 1, 1980, he did not discuss the price of the trucks which he sold to Yonkers on May 1, 1980, the date he received full payment from the Yonkers firm. Maietta also displayed a selective memory, failing to recall numerous critical events while recalling, with specificity other events.

As for the testimony of employee David Harris, I credit it without reservation. He testified in a steady, consistent, and unhesitating manner. He was not one of the card signers, therefore on his return to the State Line, Pennsylvania, area in December 1979, Harris went back to work for Respondent.[10] Frank Maietta trusted Harris and on several occasions he confided in Harris. As an example, Harris was summoned by Frank Maietta to be a witness when Maietta "recalled" Stine. As previously stated, on February 28, 1980, Frank Maietta, in response to Harris' queston about the aforementioned February 28, 1980, newpaper article, told Harris "no g— damn Federal Judge is going to tell me how to run my f— business. This old boy has still got some tricks up his sleeve."

I am convinced that Frank Maietta did bring back Stine and Mills as testified by Harris and that he "set up" Stine by asking Harris and Harshman to be witnesses when he asked Stine if he had a Maryland license. Maietta knew Stine did not have one and, in fact, he and other employees had worked for Respondent without a Maryland license. Maietta then asked Harris and Harshman to repeat what they had heard and after Stine left, Maietta told Stine and Harshman that Mills did not show up and blew his case and that Mills did him a big favor by not coming in and, further, "now that I've brought Cassidy in I now don't have to bring the other guys back."[11]

The General Counsel has proven by a preponderance of the evidence that Respondent entered into a business relationship with Cassidy and eliminated a portion of Respondent's business to avoid recalling the 10 "troublemakers" and to avoid, for all practical purposes, its bargaining obligations. In fact, even before a Decision in the prior case issued, Maietta was planning that course of action, as is revealed by the phone call between Maietta and Cassidy in January and February of 1980. Respondent, Cassidy, and McKew also showed their contempt for these proceedings by not complying with the *subpoenas duces tecum* and *ad testificandum* thus requiring the General Counsel, at considerable additional expense, to seek enforcement. Notwithstanding the court enforcement order, neither Respondent nor Cassidy complied entirely with the *subpoenas duces tecum*. Neither produced his home telephone bills for the period requested.

Respondent reduced its operations and subcontracted unit work without prior consultation and/or negotiations with the Union and in order to avoid its bargaining obligations, in violation of Section 8(a)(1) and (5) of the Act. In addition, Respondent's unilateral reduction of work at C & G on or about March 4, 1980, constitutes a violation of Section 8(a)(1) and (5). Respondent brought Cassidy onto the job to replace its reduced working operations. Respondent was under a duty to bargain with the Union before it reduced its operations at C & G and brought Cassidy onto the job. *Hospitality Motor Inn, Inc.*, 249 NLRB 1036 (1980); *Fibreboard Paper Products Corp.*, 138 NLRB 550 (1962), affd. 379 U.S. 203 (1964); *McLoughlin Manufacturing Corporation, et al.*, 182 NLRB 958 (1970), enfd. 463 F.2d 907 (D.C. Cir. 1972). I find also that the sale of trucks on May 1, 1980, was violative of Section 8(a)(1) and (5).

Respondent's final "proposal" which contained the management rights (subcontracting and sale) clause was a request which on its face no union could possibly agree with. Respondent, in the only negotiating session on April 22, 1980, rushed to impasse on the management-rights clause. Keiler admitted that he told the Union at the negotiations sessions that "this clause is so important that we would go to impasse on it, and that if the Union could not agree to this clause as we have modified it, then there would never be a contract." Following that one negotiating session and the employees' rejection thereof of the "final offer," Keiler refused to meet or negotiate any further unless the Union offered a new proposal.

I agree with the General Counsel that the concessions made by the parties on April 22, and especially those made by the Union, established that the parties were not at impasse. If any "impasse" had occurred it was only

[10] Harris initially worked for Respondent from June 1978 to August 1980. Prior to leaving, Frank Maietta had Harris sign a loyalty statement.

[11] Cassidy Trucking, McKew, M & M, as well as Respondent, were all represented by attorney Joel I. Keiler. Keiler has been Cassidy's attorney since November 11, 1976. They all lied under oath.

the result of Respondent's desire to quickly reach an impasse so as to implement the management rights clause and sell the trucks. Respondent's motives were revealed by the fact that Respondent contacted the then prospective buyer of the trucks on numerous occasions prior to negotiations and the fact that Respondent sold the trucks on May 1, 1980, only 2 days after Keiler, once again, unilaterally declared "impasse." (The Union never agreed that impasse had occurred). It is also noted that the buyer of the trucks paid Respondent in full on May 1, 1980. As previously indicated, I find that the May 1, 1980, sale of trucks was violative of Section 8(a)(1) and (5) of the Act. *Southern Florida Hotel & Motel Association*, 245 NLRB 561 (1979). (Joel I. Keiler, counsel; among the 8(a)(5) violations found, was one in which Keiler insisted upon attorneys of the Florida Bar only as arbitrators. Unilateral subcontracting and numerous other acts were also found violative.)

Elaine and Jack Cassidy's testimony is likewise incredible. I discredit their testimony. Both claimed that they never refused any mail from the National Labor Relations Board (subpoenas). However, General Counsel's Exhibits 35–40 clearly disclosed that they refused certified mail sent to them by the National Labor Relations Board. Although active in the business, Elaine Cassidy could not recall how long Keiler had been Cassidy's attorney. She also was evasive throughout her testimony. Apparently Elaine Cassidy believed she had something to hide with respect to the sale of trucks by Respondent to Cassidy in the summer of 1978. She testified that Cassidy purchased used trucks from Respondent which had mileage in excess of 1,000 miles. To the contrary, Frank Maietta and Jack Cassidy testified that the trucks were new with mileage only from the dealer to Respondent's offices. Jack Cassidy tried to explain by testifying that Elaine Cassidy was not present when the trucks were purchased. Elaine Cassidy, however, testified with certainty that she was present with her husband Jack Cassidy and they met Frank Maietta. Frank Maietta testified that he did not meet the Cassidys in regard to the sale of trucks. Both Jack Cassidy and Elaine Cassidy swore that they met Frank Maietta in that connection.

The Cassidys displayed their contempt and hostility towards the proceedings by their conflicting and unreliable testimony with respect to personal services of Board subpoenas and U.S. district court orders. Elaine Cassidy claimed that she could not recall the person who served the subpoenas identifying himself as a Board agent. She claimed he would not identify himself but later admitted that he did show his identification. Jack Cassidy readily admitted that the person serving the subpoenas did identify himself as an agent from the Board. Elaine Cassidy swore that she never heard her husband say anything to the Board agent as to whether or not the Board agent had a gun. Jack Cassidy, however, testified that he asked the Board agent if he had a gun and that Elaine Cassidy was present when he asked this question. In addition, Elaine Cassidy admitted that the Cassidys did not identify themselves to the Board agent—further displaying the Cassidys' hostile attitude towards the Board and its processes. Jack Cassidy also admitted that he avoided service by a Federal marshal; refused to tell the marshal where Elaine Cassidy was; and cursed the marshal.

As demonstrated above, Jack Cassidy was evasive in his testimony. He claimed he could not recall certain critical events. Jack Cassidy's testimony also conflicted with that of McKew. Cassidy swore that he had no discussion with McKew as to what other trucking firm was on the job and no discussion as to why C & G needed more trucks. McKew, however, admitted that he had told Cassidy that C & G had been using 12 or 13 trucks of Respondent, but that Maietta could then only give them "X number" of trucks and that C & G therefore needed additional trucks on the job.

McKew's testimony was unreliable, especially with regard to his conflicting testimony as to his initial failure to appear at the hearing even though he had been subpoenaed. At first he testified, in effect, that Keiler had advised him not to appear at the hearing. He later became evasive, inconsistent, and almost incoherent with respect to his retreat from that testimony. Dennis Maietta was also evasive and displayed a very poor memory of critical events.

Joel Keiler's testimony was evasive, self-serving, hostile, obstreperous, and inconsistent. When asked by the General Counsel whether Respondent was sticking with its management rights clause, Keiler incredibly testified in the negative, stating that Respondent would have considered further modifications in the clause. However, when confronted with his affidavit which stated that he told the Union everything was negotiable except the management-rights clause, Keiler attempted to explain the conflict by maintaining that he meant that the management-rights clause would not be traded. This explanation was inconsistent with Keiler's other testimony concerning the importance of the clause to Respondent, Respondent's intention to go to impasse on the clause, and Respondent's declaration that there would be no contract unless the Union agreed that the clause is already modified.[12] I find that Keiler's testimony is unworthy of belief.

As contended by the General Counsel, Respondent's witnesses should be discredited based upon, *inter alia*, the contradictions within each Respondent's witnesses testimony; the contradiction in the testimony between each Respondent's witnesses testimony; the self-serving, hostile, and evasive testimony of Respondent's witnesses; Respondent's witnesses failure to recall, deliberately and/or otherwise, important events; the inherent implausibility of their testimony when viewed in context of established or admitted facts.[13] On the other hand, the General Counsel's witnesses did not display such Characteristics and therefore I credit witnesses of the General Counsel over Respondent's witnesses.

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[12] If Respondent was willing to consider further modifications, even though that was not communicated to the Union, then no impasse would be reached.

[13] I consider the Maiettas, the Cassidys, and McKew as Respondent witnesses even though they may have been called as 611(c) witnesses of the General Counsel.

E. *Respondent's Defense*

Respondent, through Frank Maietta, testified that the reason for reduction in the number of trucks that Respondent could supply to C & G was his brother's health, and notes had become due. However, his brother had been sick for a long time and, according to other testimony of Frank Maietta, he had been "non-active" in the business since late 1978. Although he claimed that notes had become due and that such notes would verify his testimony, Respondent produced no evidence whatsoever to substantiate this claim nor did he testify as to when the notes became due. According to McKew, superintendent at C & G, the only reason advanced by Maietta on February 28, 1980, for the reduction in trucks was Maietta's brother's health. It is difficult to understand why, if notes had become due, Respondent would reduce its operations at C & G inasmuch as Respondent was paid by C & G for each truck operated. Furthermore, the timing of the reduction in the number of trucks, coming less than a week after the court order, appears more than coincidental. It reveals discriminatory motivation. The reduction in trucks was made voluntarily by Respondent and was not at the request of C & G.

I agree with the General Counsel that in view of the past relationship between Cassidy and Respondent and in view of both companies having the same attorney, Joel Keiler, it would have had to have been a rather strange coincidence for Cassidy to have appeared 1 week after district court order; for Cassidy to have hired two of Respondent's laid-off employees at the recommendation of Frank Maietta; for Cassidy drivers to have used Respondent's work tickets; for Jack Cassidy to have appeared often at Respondent's office; for Cassidy storing its trucks on Respondent's property; and for Respondent using Cassidy equipment.

Even though the evidence does not show the precise nature of the relationship between Respondent and Cassidy, that may be attributed at least in part to the lies of the Cassidys and the Maiettas and Respondent's failure to produce, in accordance with the subpoenas, checks prior to June 1980.[14] The entire record in this case convinces me that Respondent reduced its business and called Cassidy in and thus was able to retain its most senior employees and avoid recalling discriminatees. At the time he was reducing his operations at C & G, reportedly because of the health of his brother and notes becoming due, Frank Maietta was forming a new company "M & M Excavating" with none other than McKew, also represented by Joel Keiler, and in which Maietta was able to and did invest $50,000. Thus, Frank Maietta was obviously carrying out his threats to close the business before hiring back any of the discriminatees. In addition, Respondent did not recall mechanic Simon Hobbs, but subcontracted a portion of Hobbs' work.

Hobbs was hired as Respondent's mechanic in 1972 and worked as a mechanic until his discriminatory termination in August 1979. As a mechanic he worked on break jobs, engine repair work, rear end work, repairing and changing tires, picking up parts, painting, welding, and bodywork. Instead of recalling Hobbs, Respondent retained Matthew Border who was hired on August 20, 1979. Part of Border's function was to perform Hobbs' former duties of changing and repairing tires and picking up parts. These were also the duties of Schaffnit who was hired initially on September 20, 1979. Except for work which required special tools and machinery not in the possession of Respondent, Hobbs did most of the mechanical work. The record is clear that much of the subcontracted work was formerly performed by Hobbs.[15]

THE REMEDY

Having found that Respondent violated Section 8(a)(1) and (3) of the Act by reducing its operations in C & G and subcontracting work to or otherwise engaging Cassidy Trucking so as to avoid having to recall discriminatees; violated Section 8(a)(1) and (3) by subcontracting out mechanical work formerly performed by Hobbs and transferring other mechanical work to other employees so as to avoid having to recall Hobbs; violated Section 8(a)(1) and (3) by the May 1, 1980, sale of trucks; violated Section 8(a)(1) and (5) by the above unilateral conduct; and violated Section 8(a)(1) and (4) by the discharge of Harris, I shall recommend that Respondent be ordered to cease and desist from engaging in this unlawful conduct; offer reinstatement to the discriminatees and Harris to their former or substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges; make the discriminatees and Harris whole with full backpay and interest for any loss of earnings suffered as a result of the discrimination against them, to run from the date of discharge until offer of reinstatement or, if no work is available, until the discriminatees and Harris secure substantially equivalent permanent employment with another employer; to restore its trucking operations; rescind the aforementioned subcontracting or other business relationship with Cassidy Trucking; cease subcontracting out mechanic work formerly performed by Hobbs and cease transferring his work to other employees; recall Hobbs to his mechanic position, without prejudice to his seniority or other rights and privileges; bargain in good faith with the Union; and post an appropriate notice to employees.

To remedy Respondent's violations of Section 8(a)(3) and (1) of the Act, I shall order Respondent to offer employees Melvin Miller, Blaine J. Jordan, Jr., Stephen

[14] According to Respondent, "burglars must have taken these records."

[15] Hobbs was a credible witness. His testimony was given candidly, consistently, and without hesitation. Frank Maietta in an offhand, contemptuous manner attempted to belittle and controvert Hobbs' testimony concerning the performance of jobs for Respondent. I note that Hobbs worked as a mechanic for Respondent for 7 years and, apparently, until his discriminatory firing by Respondent was considered good enough to be retained as such. Hobbs' work was satisfactory to Respondent until he engaged in protected activity.

Respondent's defense is characterized by its failure to produce economic records to establish economic hardship; failure to produce medical records of the ill partner; failure to produce a replacement employer (Cassidy), and the general contractor (C & G) to establish a lack of connection among the parties; and resistance of *subpoenas ad testificandum* and *duces tecum* requiring enforcement by Federal court. Respondent's attorney, on behalf of the Cassidys and McKew, resisted the *subpoenas ad testificandum* and *duces tecum*, requiring enforcement in Federal district court. Respondent was hostile, evasive, and untruthful. He conducted himself disgracefully at the hearing.

Walker, Edward M. Johnston, William E. Stanley, Jr., Donald Carr, John Mills, Simon Hobbs, John H. Stine, Curtis McKeithan, and David Harris, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges and make them whole for any loss of earnings or benefits they may have suffered by paying to them a sum of money equal to the amount they normally would have earned from the date of their termination to the date of Respondent's offer of reinstatement, less net interim earnings. All monyes to be paid to the above employees shall be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[16]

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All construction employees employed by Maietta Contracting, including truck drivers, mechanics, utility employees, and equipment operators, and excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. The Union, by virtue of Section 9(a) of the Act, has been and is the exclusive representative of the employees in the unit described above for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment. Respondent violated Section 8(a)(1) and (3) of the Act by reducing its operations with C & G and subcontracting work to or otherwise engaging Cassidy Trucking so as to avoid having to recall discriminatees.

5. Respondent violated Section 8(a)(1) and (3) by subcontracting out mechanical work formerly performed by employee Hobbs and transferring other mechanical work to other employees so as to avoid having to recall Hobbs.

6. Respondent violated Section 8(a)(1) and (3) by the May 1, 1980, sale of trucks.

7. Respondent violated Section 8(a)(1) and (5) by the above unilateral conduct.

8. Respondent violated Section 8(a)(1) and (4) by the discharge of employee Harris.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER

The Respondent, Dennis G. Maietta and Frank M. Maietta, t/a Maietta Contracting, Chambersburg, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Reducing its operations at C & G or any other employer and subcontracting work or otherwise engaging Cassidy Trucking so as to avoid having to recall discriminatees.

(b) Subcontracting out mechanical work formerly performed by employee Hobbs and transfering other mechanical work to other employees so as to avoid having to recall Hobbs.

(c) Selling its trucks to avoid recalling discriminatees.

(d) Selling its trucks or other equipment without notifying the Union.

(e) Discharging its employees because they have given affidavits to Board agents.

(f) Failing or refusing to recognize and bargain collectively with the Union as exclusive bargaining representative of the employees in the unit described above.

(g) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Upon request, recognize and bargain collectively in good faith concerning rates of pay, wages, hours, and other terms and conditions of employment with the Union as exclusive bargaining representative of the employees in the appropriate bargaining unit described above, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer immediate and full reinstatement to employees Melvin Miller, Blaine J. Jordan, Jr., Stephen Walker, Edward M. Johnston, William E. Stanley, Jr., Donald Carr, John Mills, Simon Hobbs, John H. Stine, Curtis McKeithan, and David Harris, to their former position or, if those positions no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered as a result of their unlawful discharge, in the manner set forth in the section herein entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Stateline, Pennsylvania, place of business, copies of the attached notice marked "Appendix."[17] Copies of said notice on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's representatives, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to em-

[16] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[17] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ployees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.